REMARKS/ARGUMENTS

Prior to entry of this Amendment, claims 1, 2, 4, 5, 7, 8, 10-15, 17, 18, and 20-24 were pending in this application. Claims 1, 8, 14, 15, 17, 18, and 20 have been amended, no claims have been added, and no claims have been canceled herein. Therefore, claims 1, 2, 4, 5, 7, 8, 10-15, 17, 18, and 20-24 remain pending in this application. The Applicants respectfully request reconsideration of this application for at least the reasons presented below.

35 U.S.C. § 101 Rejections, Non-statutory matter

The Office Action has rejected claims 14, 15, 17, 18, and 20 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. More specifically, the Office Action argues that "a distribution program product" is software per se and thus not patentable subject matter. For the sake of expediency in moving this matter towards allowance, 14, 15, 17, 18, and 20 have been amended herein to recite a machine readable medium which the Applicants contend has long been held to comprise patentable subject matter. Therefore, the Applicants respectfully request withdrawal of the rejection.

35 U.S.C. §102 Rejection, Aristides

The Office Action has rejected claims 1-2, 4-5, 8, 11-15, 17-18, and 21-24 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,657,072 to Aristides et al. (hereinafter "Aristides"). The Applicant respectfully submits the following arguments pointing out significant differences between claims 1-2, 4-5, 8, 11-15, 17-18, and 21-24 submitted by the Applicants and Aristides.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053

(Fed. Cir. 1987). Applicants respectfully argue that Aristides fails to disclose each and every

claimed element. For example, Aristides fails to disclose, either expressly or inherently, storing

content at a user location before the user specifically requests the content. Furthermore,

Aristides fails to disclose, expressly or inherently, storing a segment of the content at the user

location before the user specifically requests the content, wherein a length of the segment is

based on a time between a start time of the content on a first distribution channel and a start time

of the content on a second, different distribution channel with a staggered start time.

> Aristides is directed to "interactive entertainment network systems, such as

interactive television systems, and to electronic program guides which operate in conjunction

with these systems." (Col. 1, lines 7-10) Under Aristides:

> "The system transmits at least some program data records, which are likely to be
> requested by the EPGs during peak demand times, to many of the subscriber's
> during off-demand times prior to the peak times. This large scale, one-to-many
> network transmission is conducted solely by the headend at its own initiation, and
> not in response to any requests from the EPGs. The program data records are
> stored at the set-top boxes for use during the peak time. As a result, during the
> ensuing peak time, the EPG displays the programming information contained in
> the stored program data records rather than requesting the information from the
> headend. This pre-peak transmitting scheme significantly reduces the number of
> requests made to the headend during the peak time. If the viewer wishes to view
> the entire menu of available programs, the EPG might still request such
> information from the headend; but a substantial amount of the demand will be met
> by early-transmitting some of the program data records to the EPGs." (Col. 3,
> lines 9-26)

> However, Aristides does not disclose, expressly or inherently, storing content at a

user location before the user specifically requests the content. Rather, the head-end of Aristides

pre-stores EPG data, not content such as a video or audio program either in whole or in part. See

also col. 1, lines 33-39 which clearly defines these data records as EPG data related to programs

but not the programs themselves. Furthermore, Aristides does not disclose expressly or

inherently, storing a segment of the content at the user location before the user specifically

requests the content, wherein a length of the segment is based on a time between a start time of

the content on a first distribution channel and a start time of the content on a second, different distribution channel with a staggered start time.

Claim 1, upon which claims 2, 4-7, and 21-23 depend, is directed to a method for distributing content sent by a content distributor to a user location. Claim 14, upon which claims 15, and 17-20 depend, is directed to a distribution program product having code for distributing content sent by a content distributor to a user location. Both claim 1 and claim 14 recite in part "receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises a subset of a plurality of linearly scheduled programs, each of the plurality of linearly scheduled programs available from the content distributor on a plurality of different distribution channels with staggered start times, wherein the subset is associated with a premium subscription service, and wherein the content comprises at least one of a video program or an audio program; processing the command sent from a remote location with respect to the user location; receiving the content at the user location on at least one of the plurality of distribution channels; storing a segment of the content at the user location in response to at least the processing the command, wherein a length of the segment is based on a time between a start time of the content on a first distribution channel and a start time of the content on a second distribution channel; and detecting a user action related to the content after storage of the content." Aristides does not disclose, expressly or inherently, storing content at a user location before the user specifically requests the content. Rather, the head-end of Aristides pre-stores EPG data, not content such as a video or audio program either in whole or in part. Furthermore, Aristides does not disclose expressly or inherently, storing a segment of the content at the user location before the user specifically requests the content, wherein a length of the segment is based on a time between a start time of the content on a first distribution channel and a start time of the content on a second, different distribution channel with a staggered start time. For at least these reasons, the rejection is improper and claims 1-2, 4-7, 14-15, and 17-22 should be allowed.

Claim 8, upon which claims 9-13 and 24 depend, is directed to a method for distributing content sent by a content distributor to a user location and recites in part "determining a subset of content from a plurality of linearly available programs, each of the plurality of linearly available programs available from the content distributor on a plurality of different distribution channels with staggered start times, wherein the subset of content is associated with a premium subscription service and comprises at least one of a video program and an audio program; commanding the user location to store a segment of the subset of content from the content distributor without a user associated with the user location specifically requesting the subset of content, wherein: a length of the segment of the subset of the content is based on a time between a start time of the subset of the content on a first distribution channel and a start time of the subset of the content on a second distribution channel; the subset of content is stored proximate to the user location, and the content distributor is remotely-located from the user location; and sending the subset of content to the user location for storage before a user specifically requests the subset of content. " Aristides does not disclose, expressly or inherently, storing content at a user location before the user specifically requests the content. Rather, the head-end of Aristides pre-stores EPG data, not content such as a video or audio program either in whole or in part. Furthermore, Aristides does not disclose expressly or inherently, storing a segment of the content at the user location before the user specifically requests the content, wherein a length of the segment is based on a time between a start time of the content on a first distribution channel and a start time of the content on a second, different distribution channel with a staggered start time. For at least these reasons, the rejection is improper and claims 8-13 and 24 should be allowed.

35 U.S.C. § 103 Rejection, Aristides in view of Kenner

The Office Action has rejected claims 7, 10, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Aristides, in view of U.S. Patent No. 6,181,867 to Kenner et al. (hereinafter "Kenner"). The Applicants respectfully request reconsideration and withdrawal of

Appl. No. 09/687,157
Amdt. dated December 2, 2009
Reply to Office Action of September 2, 2009

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the rejection for at least the reason that claims 7, 10, and 20 each depend upon a base claim which is though to be allowable as discussed in detail above.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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